



Special Executive Report

S-8476

December 17, 2019

Amendments to CME, CBOT, NYMEX/COMEX Chapter 4 (“Enforcement of Rules”) and Related Rules

Effective on January 2, 2020, and pending all relevant CFTC regulatory review periods, Chicago Mercantile Exchange Inc. (“CME”), in its dual capacity as both a designated contract market (“DCM”) (“CME”) and a derivatives clearing organization (“DCO”) (“Clearing House”), The Board of Trade of the City of Chicago, Inc. (“CBOT”), New York Mercantile Exchange, Inc. (“NYMEX”), and Commodity Exchange, Inc. (“COMEX”), each in their capacities as a DCM (each an “Exchange” and collectively, the “Exchanges”) are adopting amendments to the Definitions Section, various rules in CME, CBOT, NYMEX/COMEX Chapters 4 (“Enforcement of Rules”), 8 (“Clearing House and Performance Bonds”), and CME Chapters 8F (“Over-the-Counter Derivative Clearing”), 8G (“Interest Rate Derivative Clearing”), 12 (“CME Spot Market – Electronic”), and 13 (“Spot FX Transactions”), (collectively, the “Rule Amendments”) effective on Thursday, January 2, 2020.

As described below, the Rule Amendments modify outdated language in certain rules and adopt conforming amendments to certain rules based on amendments recently adopted to CME, CBOT, NYMEX/COMEX Rule 435 (“Effect of Suspension or Expulsion”).¹

Definitions

The Exchanges are adopting a definition of the terms designated contract maker, derivatives clearing organization, and swap execution facility based on the more widespread use of the terms in Chapter 4. Adopting the new definitions necessitates capitalization of those terms in other rules in CME, CBOT, NYMEX/COMEX Chapter 8 (“Clearing House and Performance Bonds”) and CME Chapters 8F (“Over-the-Counter Derivative Clearing”), 8G (“Interest Rate Derivative Clearing”), 12 (“CME Spot Market Trading – Electronic”) and 13 (Spot FX Transactions”).

Rule 402 (“Business Conduct Committee”)

The amendments conform to the aforementioned amendments Rule 435.

Rule 413 (“Summary Access Denial Actions”)

The ability of the Chief Regulatory Officer (“CRO”) to summarily deny access to any or all CME Group markets in the first provision of the rule renders the second and third provisions unnecessary. Those provisions are being eliminated.

¹ See CME Group Special Executive Report [SER-8415](#) from July 18, 2019.

Rule 432 ("General Offenses")

The existing reference in Subsection S. ("to fail, after hearing, to comply with an order of the Board, Exchange staff or any hearing committee") inaccurately references the term "hearing." Staff of Market Regulation has sanctioning authority for minor violations of certain rules, and failure to pay those sanctions also constitutes a violation of Rule 432.S. The amendment strikes the reference to "after hearing."

The amendment to Subsection Y. is intended to conform to the aforementioned amendments to Rule 435.

Rule 444 ("Payment of Disciplinary Fines, Disgorgement and Restitution Orders")

The amendments to Rule 444 limit the scope of the loss of privileges for failure to pay a disciplinary fine, disgorgement order, or restitution ("failure to pay") to any designated contract market, derivatives clearing organization, or swap execution facility owned or controlled by CME Group, in accordance with the aforementioned amendments to Rule 435.

The current provision stating that a member firm that fails to make payment will forfeit preferred fee treatment for its proprietary trading is being deleted as unnecessary since the preceding sentence bars such firms from any trading in our markets while the fine remains unpaid. The first sentence of Rule 444 is also being amended to remove the reference to Exchange disciplinary committees in favor of adopting more generic language.

The Rule Amendments are set forth below, with additions underscored and deletions ~~everstruck~~.

Questions regarding the Rule Amendments may be directed to one of the following individuals in the Market Regulation Department:

Robert Sniegowski, Executive Director, Rules & Regulatory Outreach, at 312.341.5991

Erin Middleton, Manager, Rules & Regulatory Outreach, at 312.435.3648

CME, CBOT, NYMEX/COMEX Rulebooks
Definitions

DERIVATIVES CLEARING ORGANIZATION OR DCO

A clearing organization as defined in CFTC Regulation 1.3.

DESIGNATED CONTRACT MARKET OR DCM

A contract market as defined in CFTC Regulation 1.3.

SWAP EXECUTION FACILITY OR SEF

A swap execution facility as defined in CFTC Regulation 1.3.

Chapter 4
(“Enforcement of Rules”)

402. BUSINESS CONDUCT COMMITTEE

[Section A. is unchanged.]

402.B. Sanctions

If the Panel finds that a party, including a Member, has violated a Rule, the Panel may take one or more of the following actions:

1. Order the party to cease and desist from the conduct found to be in violation of these ~~-~~Rules or

from conduct which would violate the rules of any other exchangeDesignated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group, or the Commodity Exchange Act;

2. Order a party to liquidate such portion of the open contracts in the party's proprietary or customers' accounts, or both, as the Panel deems appropriate to ensure the integrity of Exchange contracts or to ensure an orderly and liquid market;
3. Order a party or its customer to deposit such additional performance bonds with the Clearing House as the Panel deems appropriate to protect the integrity of open contracts;
4. Prescribe such additional capital or other financial requirements as it deems appropriate;
5. Restrict the ability of the party to have a business affiliation with, be employed by or have a financial or beneficial interest in a Member or broker association;
6. Restrict, suspend or terminate the party's 1) access to the Globex platform, the Trading Floor, or 2) direct and/or indirect access to any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facilityany other trading or clearing platform or facility owned or controlled by CME Group, or 3) right to supervise the entry of any orders by others into such CFTC-regulated entities owned or controlled by CME Groupplatforms by others;
7. Restrict the party's ability to trade, place, enter, accept or solicit orders in any or all products of any exchangeDesignated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group;
8. Suspend any or all of the Member's privileges of membership as defined in Rule 121;
9. Expel the Member from membership in any exchangeDesignated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group;
10. Impose a fine upon the party not to exceed \$5,000,000 per violation;
11. Order a party to disgorge any monetary benefit resulting from a violation of an Exchange Rule whether by that party or another party. For purposes of this provision, benefit includes, without limitation, profit, whether realized or unrealized, and avoided losses;
12. Prescribe limitations on positions of the party as may be appropriate, including issuing an Order that no Clearing Member accept new positions on behalf of any such party;
13. Impose advertising restrictions upon the Member pursuant to these Rules;
14. Order a party to make restitution to the account of anyone damaged by the conduct, or to the Clearing Member who has previously made restitution to the account of such party;
15. Order a party or its legal counsel or other representative to pay out of pocket expenses incurred by the exchange in connection with the matter if such party, counsel or representative engaged in vexatious, frivolous or bad faith conduct during the course of an investigation or enforcement proceeding;
16. Revoke the regularity status of a regular firm;
17. Order such action as is necessary to prevent a threat to the contract or violation of the Commodity Exchange Act or Exchange Rules; and/or
18. With the approval of the Market Regulation Department and the party, order any other sanction or undertaking to address or deter the underlying violative conduct pursuant to a supported offer of settlement.

When determining whether to impose any of the sanctions listed above, the Panel may consider any factors determined by the Panel to be relevant in the context of a particular case, including any of the factors described in the "Sanctioning Guidance to Self-Regulatory Organizations" in the CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions: Penalty Guidelines (1994).

402.C. Emergency Actions

[Section 1. Is unchanged.]

2. In the event that the BCC determines, in the good faith exercise of its sole discretion, that an emergency exists, it may take any of the following emergency actions or any other action that may be appropriate to respond to the emergency:
 - a. Suspend, curtail or terminate trading in any or all contracts;
 - b. Restrict, suspend or terminate a party's 1) access to the Globex platform, the Trading Floor, or 2) direct and/or indirect access to any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facilityany other trading or clearing platform or facility owned or controlled by CME Group, or 3) right to supervise the entry of any orders by others into such CFTC-regulated entities owned or controlled by CME Groupplatforms by others;

~~Organization, or Swap Execution Facility or any other trading or clearing platform or facility owned or controlled by CME Group, or 3) right to supervise the entry of any orders by others into such CFTC-regulated entities platforms by others owned or controlled by CME Group;~~

- c. Limit trading to liquidation of contracts only;
- d. Impose or modify position limits and/or order liquidation of all or a portion of a party's account;
- e. Order liquidation or transfer of positions as to which the holder is unable or unwilling to make or take delivery;
- f. Confine trading to a specific price range;
- g. Modify price limits;
- h. Modify the trading days or hours;
- i. Modify conditions of delivery;
- j. Establish the settlement price at which contracts are to be liquidated;
- k. Require additional performance bond to be deposited with the Clearing House; and/or
- l. Order any other action or undertaking to address or relieve the emergency.

[The remainder of the Rule is unchanged.]

413. SUMMARY ACCESS DENIAL ACTIONS

413.A. Authority to Deny Access

The Chief Regulatory Officer or his delegate, upon a good faith determination that there are substantial reasons to believe that such immediate action is necessary to protect the best interests of the Exchange, may order that: ~~1) any party be denied access to any or all CME Group markets; 2) any party be denied access to the Globex platform; 3) any party be denied access to any other electronic trading or clearing platform owned or controlled by CME Group; or 4) any Member be immediately removed from any trading floor or facility owned or controlled by CME Group.~~

[The remainder of the Rule is unchanged.]

432. GENERAL OFFENSES

It shall be an offense:

[Subsections A. – R. are unchanged.]

S. to fail, ~~after hearing~~, to comply with an order of the Board, Exchange staff, or any hearing committee;

[Subsections T. – X. are unchanged.]

Y. to use improperly the ~~Globex platform or any electronic~~ trading or clearing platform ~~of any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility~~ owned or controlled by CME Group or permit the unauthorized use of such platforms; and/or

[The remainder of the Rule is unchanged.]

444. PAYMENTS OF DISCIPLINARY FINES, DISGORGEMENT ORDERS, AND RESTITUTION

Disciplinary fines, disgorgement, and restitution amounts ~~levied pursuant to Exchange rules ordered by an Exchange disciplinary committee~~ must be submitted to the Market Regulation Department no later than the date specified in the notice of decision, except that fines issued by the Clearing House Risk Committee shall be paid to the Financial and Regulatory Surveillance Department. An individual or entity who fails to provide proof of payment within the time prescribed ~~shall not be entitled to direct or indirect access to any Designated Contract Market, Derivatives Clearing Organization, or Swap Execution Facility owned or controlled by CME Group~~ will forfeit the following privileges until the payment has been received: ~~1) access to all CME Group markets; 2) access to the Globex platform; and 3) access to any other electronic trading or clearing platform owned or controlled by CME Group. Any member firm that fails to make the required payment within the time prescribed will automatically forfeit preferred fee treatment for its proprietary trading until the payment has been received.~~ Any party that fails to make the required payment shall immediately forfeit eligibility for any Exchange incentive or rebate program until the amount is paid in full. Any party that fails to pay a disciplinary fine, disgorgement order, or restitution amount within the prescribed time period may also be subject to sanctions pursuant to Rule 432.S.

Parties may, subject to a determination by the sanctioning entity, be liable for unpaid fines or unpaid disgorgement orders and restitution amounts imposed upon their employees.

Chapter 8
(“Clearing House and Performance Bonds”)

815. THIRD PARTY EXECUTION PLATFORMS FOR SWAPS

815.A. Exclusivity of Clearing House Rules

The Clearing House Rules shall exclusively apply, and prevail to the extent there is any conflict with any third party rules, to all swap trades, and resulting positions, from the time that a swap trade, including a swap trade executed on a ~~S~~swap ~~E~~xecution ~~F~~facility (“SEF”) or other third party execution platform for swaps (collectively, “Third Party Execution Platforms”), is submitted for clearing. Notwithstanding the foregoing, if the Clearing House rejects a swap trade for clearing, the Clearing House Rules shall cease to apply to that swap trade until such swap trade is resubmitted for clearing.

CME Rulebook

Chapter 8F
(“Over-the-Counter Derivative Clearing”)

8F005. SUBSTITUTION AND TIMEFRAME OF ACCEPTANCE FOR CLEARING

An OTC Derivative that is both executed and submitted to the Clearing House on the current business date at prevailing market prices, and in accordance with the rules governing such transaction shall be guaranteed by the Clearing House once accepted at the Clearing House. An existing OTC Derivative (i.e., a backloaded trade) that is submitted to the Clearing House for clearing, shall be guaranteed by the Clearing House at the time payment of initial settlement of mark to market, performance bond and any other applicable initial OTC cash flows for such OTC Derivative, in accordance with the procedures set forth in Rule 814, is confirmed by the appropriate settlement bank for both OTC Clearing Members. The Clearing House shall substitute itself as the counterparty to each party to the original transaction at the time of guarantee.

With regard to an OTC Derivative submitted for clearing that is executed on or subject to the rules of a ~~D~~esignated ~~C~~ontract ~~M~~arket or a ~~S~~wap ~~E~~xecution ~~F~~facility, the Clearing House shall accept or reject such OTC Derivative for clearing in accordance with the time frames required under CFTC Regulation 39.12(b)(7)(B)(ii). Except with respect to a backloaded trade, an OTC Derivative submitted for clearing that is not executed on or subject to the rules of a ~~D~~esignated ~~C~~ontract ~~M~~arket or a ~~S~~wap ~~E~~xecution ~~F~~facility, or that is executed noncompetitively on or subject to the rules of a ~~D~~esignated ~~C~~ontract ~~M~~arket or a ~~S~~wap ~~E~~xecution ~~F~~facility, shall be accepted or rejected for clearing in accordance with the time frames required under CFTC Regulation 39.12(b)(7)(B)(iii).

The OTC Clearing Member shall be deemed the principal to the transaction when executed by that Clearing Member for its own proprietary account, as a guarantor agent to the transaction when executed by that Clearing Member for the account of a proprietary affiliate, or the agent when executed by the clearing member for the account of an authorized customer of that Clearing Member. After that substitution, there shall be two equal and offsetting over-the-counter transactions as follows: one between the buyer and the Clearing House, as seller; and an equal and offsetting transaction between the Clearing House and the seller.

Chapter 8G
(“Interest Rate Derivative Clearing”)

8G05. SUBSTITUTION AND TIMEFRAME OF ACCEPTANCE FOR CLEARING

If an IRS Product or a portfolio of IRS Products (i) is submitted by IRS Clearing Members who are in good standing, (ii) was executed and submitted in accordance with the rules governing such IRS Product and (iii) does not exceed the credit limits established by the Clearing House for the IRS Clearing Member submitting such IRS Product or portfolio of IRS Products, then the Clearing House shall substitute itself as the counterparty to each party of each original transaction and there shall be two equal and offsetting contracts for each original transaction as follows: one between the original buyer and the Clearing House, as seller and one between the original seller and the Clearing House, as buyer.

An existing IRS Product or portfolio of IRS Products (i.e., a backloaded trade) submitted to the Clearing House for clearing, shall be guaranteed by the Clearing House at the time payment of initial settlement of mark to market, performance bond and any other applicable initial OTC cash flows for such IRS Product or portfolio of IRS Products, in accordance with the procedures set forth in Rule 814, is confirmed by the appropriate settlement bank for both IRS Clearing Members. The Clearing House shall substitute itself as the counterparty to each party to the original transaction at the time of guarantee.

With regard to an IRS Product submitted for clearing that is executed on or subject to the rules of a Designated Contract Market or a Swap Execution Facility, the Clearing House shall accept or reject such OTC Derivative for clearing in accordance with the time frames required under CFTC Regulation 39.12(b)(7)(B)(ii). Except with respect to a backloaded trade, an IRS Product submitted for clearing that is not executed on or subject to the rules of a Designated Contract Market or a Swap Execution Facility, or that is executed noncompetitively on or subject to the rules of a Designated Contract Market or a Swap Execution Facility, shall be accepted or rejected for clearing in accordance with the time frames required under CFTC Regulation 39.12(b)(7)(B)(iii). The IRS Clearing Member shall be deemed the principal to the IRS Contract when cleared by such IRS Clearing Member for its own proprietary account and shall be deemed a guarantor and agent of the IRS Contract when cleared by such IRS Clearing Member for the account of an affiliate or customer of such IRS Clearing Member.

Chapter 12
(“CME Spot Market - Electronic”)

Electronic trading of a spot commodity contract on the CME Spot Market via the CME Direct Auction Platform (“CDAP”) is facilitated by Chicago Mercantile Exchange Inc. and governed by the Rules of this Chapter. Unless otherwise specified in this Chapter, CME Spot Market trades are not subject to the Rules applicable to trading of other contracts offered by CME or any of the CME Group Designated Contract Markets. Defined terms of this Chapter are included in the Definitions Section of the CME Rulebook.

Chapter 13
(“Spot FX Transactions”)

1303. GENERAL PROVISIONS

[Subsections A. – F. are unchanged.]

1303.G. Spot FX Transactions are not regulated futures contracts and are not executed on or subject to the rules of the Exchange in its capacity as a Designated Contract Market.

[The remainder of the rule is unchanged.]

The Rule Amendments eliminate the Probable Cause Committee (“PCC”) which currently issues charges against respondents in Exchange disciplinary proceedings where the PCC finds there is a reasonable basis to believe that a rule violation may have been committed, and where Market Regulation has been unable to reach an agreed upon settlement of a matter. Under the Rule Amendments, the authority to issue charges will rest with the Chief Regulatory Officer (“CRO”). The purpose of the Rule Amendments is to increase the efficiency of the disciplinary process without depriving market participants of any significant process rights since respondents will maintain the right to take a formal disciplinary proceeding to a contested hearing before the Business Conduct Committee.

In addition to the elimination of the PCC, the Rule Amendments add a new provision to Rule 408. (“Conduct of Hearings”) setting forth the default process where a respondent fails to timely answer charges issued by the CRO. This new provision adds transparency to the default process but does not represent a substantive change from the manner in which default proceedings are currently handled by Market Regulation.